It is apparent that the principal case has given an interpretation to the statute different from that laid down in the earlier case. Which is correct is doubtful, but it is submitted that the construction announced in the more recent case should be favored for several reasons. The Act of 1901 does not declare that the marriage of first cousins is incestuous, nor provide a punishment for its violation, nor refer to the Act of 1860, which prescribes the table of incestuous marriages; it strikes down the marriage from a purely civil, not a criminal, view point.

I. B.

CONTRACTS—FIXING RESALE PRICES—RESTRAINT OF TRADE —In *Ghirardelli Co.* v. *Hunsicker*,[1] the manufacturer attached to each can of his ground chocolate a label stating the prices at which the article could be retailed. Thus the case presented the simplest form of the "contract system" of maintaining fixed prices on the resale of a manufactured article. The other method of accomplishing this object is for the manufacturer to offer to refund a specified portion of the purchase money to dealers who maintain the retail prices designated by the producer. This type of contracts has been uniformly upheld; the courts saying the dealer was not bound to maintain the prices, he was merely offered an inducement to do so. *In re Green*;[2] *Walsh* v. *Dwight*.[3] In reality such agreements are held not to be an illegal restraint of trade because the consumer can sometimes purchase below the stated price, *i. e.*, some retailers will cut prices.

The suit was by a manufacturer against a retailer, who had bought his goods from a wholesaler, and the court had no trouble in deciding that the agreement between the jobber and the defendant was for the benefit of the plaintiff. This is certainly sound; as well as the disposition the court made of the manufacturer's contention that the trade name and secret process under which the article was put out took it out of the general rule and brought it under the exception in favor of patented articles, *Bement* v. *Nat. Harrow Co.*,[4] which was definitely settled against the vendors of proprietary articles in *Dr. Miles Med. Co.* v. *Park*.[5] But the court refused to follow the decision of the Federal Supreme Court in the case last cited as to the principal point—whether

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the parties were punishable criminally for incest. Compare this reasoning with the language of Judge McPherson in U. S. Rodgers: "It seems to me to be impossible to recognize this marriage as valid in Pennsylvania, since a continuance of the relation here would at once expose the parties to indictment in the criminal court, ... In other words, this court would be declaring the relation lawful, while the court of Quarter Sessions of Philadelphia County would be obliged to declare it unlawful."

[1] 128 Pac. Rep. 1041 (Cal., 1912).
[2] 52 Fed. 104 (1894).
[3] 58 N. Y. Suppl. 91 (1899).
[4] 186 U. S. 70 (1902).
[5] 220 U. S. 373 (1911).

this system of business was an illegal restraint of trade. The California court doubtless felt bound by its earlier determination of this question in *Grogan* v. *Chaffee*.[6] These decisions are against the present tendency of the courts, *Park* v. *Hartman*,[7] *Hill* v. *Gray*;[8] though supported by the earlier cases, *Ice Co.* v. *Park*;[9] *Ellimon Co.* v. *Carrington*,[10] *Garst* v. *Harris*.[11]

The decision in the principal case would seem to be unsupportable as applied to ordinary articles; but there may be a valid distinction between such cases and a similar right in the producer of an article which has a long life, and which is distributed through dealers who must give a continued service in connection with the article. In such case the retailer is little more than an agent for the manufacturer. And it may be argued with great force that if the vendor with whom the customer deals, and to whom he must look for the necessary service, does not make a fair profit out of the sale he cannot afford to give the required service, the lack of which will injure the reputation of the article and so greatly damage the manufacturer. It is now well settled that it is not the fact of restraint, but the reasonableness thereof which will control, *Nordenfelt* v. *Maxim Nordenfelt & Co.*;[12] *Standard Oil Co.* v. *U. S.*;[13] and it may well be that the benefit to the public in being assured of this necessary service—the value of which to the purchaser is shown by the policy of the leading automobile companies in featuring their service—out-weighs the detriment to the public in being deprived of occasional so called "cut price sales."

For a further discussion of the principles involved in the principal case, see 60 Univ. of Pa. Law. Rev., 270 (Jan., 1912).

C. L. M.

CRIMINAL PROCEDURE — EXTRADITION — PROSECUTION FOR OTHER OFFENSES—Extradition, in its several phases and with its divers attendant problems, has always presented a more or less perplexing situation to the American courts. Heterogeneous doctrines of state rights, duties and powers have introduced inevitable complications, born of our peculiar political amalgamation of individual sovereignties. Therefore, the ultimate and expected result, diversity of opinion on nearly every point, is apparent upon an inspection of the cases. Among these problems, none is more contentious than that illustrated by the late case of *Ex parte Flack*.[1] An absconding bank cashier, who had fled to New York, was taken back to Kansas on a fugitive warrant charging him with forging the name of the maker on a note. While

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[6] 156 Cal. 611 (1909).
[7] 153 Fed. 24 (1908).
[8] 163 Mich. 12 (1910).
[9] 21 How. Pr. 302 (N. Y., 1861).
[10] (1901) 2 Ch. D. 275.
[11] 177 Mass. 72 (1900).
[12] 1904 A. C. 565.
[13] 221 U. S. 1 (1911).